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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,695	09/22/2003	Dario Toledo	2272/025	9243
22440	7590	07/19/2005	EXAMINER	
GOTTLIEB RACKMAN & REISMAN PC			HORTON, YVONNE MICHELE	
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NEW YORK, NY 100160601			3635	

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/667,695

Applicant(s)

TOLEDO, DARIO

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9, 12-34, 42, 44, 49, 51, 52 and 54 is/are rejected.
- 7) ☒ Claim(s) 10, 11, 35-41, 43, 45-48, 50 and 53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/10/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Withdrawal of Allowable Subject Matter***

The indicated allowability of claim 9 AND 54 is withdrawn in view of the newly discovered reference(s) to MAZUR. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2,12,17 and 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #4,632,138 to IRWIN. IRWIN discloses the use of a security apparatus (10) including a section of material (12) having two sides, a plurality of edges (32), a top and a bottom (both unlabeled); an access means (14'); a plurality of coupling members (40) connected to the material (12); and a plurality of attachment members (42,43) connected to the coupling members (40) and vertical/horizontal supports (21/22); wherein the attachment members (42,43) permit fastening and unfastening only from one side of the material (12), see figure 4. Regarding claim 12, the coupling members (40) are disposed at or near the edges of the material (12), see figure 4. In reference to claim 17, the attachment members (42) are hooks, column 6, line 7. Regarding claim 19, the attachment members (42,43) are hook and thistle fasteners, column 6, lines 5-8.

Claims 29,30,42,44,49 and 51 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #4,632,138 to IRWIN. IRWIN discloses the use of a security

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apparatus (10) including a section of material (12), a plurality of pairing members (13), and a plurality of fastening members (40) connected to the material (12) and connected to the coupling members (40) and vertical/horizontal supports (21/22); wherein the fastening members (40) permit fastening and unfastening only from one side of the material (12), see figure 4. Column 5, lines 41-66 details that the apparatus (10) is flexible enough to allow for the adjustment of panels (14) wherein a panel (14) may become disconnected from the others to form an end panel (14'); thereby creating a "access" means wherein access is provided to the structure, see figure 1.

Regarding claim 30, the supports (20,21) are tubular beams. In reference to claim 42 and 44, the securing means (40) are flaps (41) that "hang" at the border of the material (12) from a cross bar (20). . Regarding claims 49 and 50, the pairing members (13) are straps that form loops, see figure 4.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #6,067,911 to MARKER et al. IRWIN discloses the basic claimed apparatus except for explicitly detailing that the material section is tear-resistant or cut-proof. Although IRWIN does not detail that his material is "tear-resistant", he does; however, discloses that it is nylon, plastic or canvas. It would have been obvious to one having ordinary skill in the art that these materials are normally "tear resistant" due to the fact that it requires a cutting device in order to

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separate. Further, MARKER et al. teaches that it is known in the art to form a "security apparatus" (10) out of a tear resistant and cut-proof material, column 3, lines 32-34.

Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the security apparatus of IRWIN out of the material, as taught by MARKER et al., in order to discourage vandalism while also offering total protection and comfort to the inhabitant of the structure.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #4,779,294 to MILLER. IRWIN discloses the basic claimed apparatus except for explicitly detailing that the section of material is KELVAR. Although IRWIN does not detail that his material is "KELVAR", he does; however, discloses that it is nylon, plastic or canvas. MILLER teaches that it is known in the art to form the cover (18) of a protective structure (10) out of KELVAR material, column 4, lines 22-39. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the protective structure of IRWIN out KELVAR material, as taught by MILLER, in order to protect a user from external debris or other unwanted external influences.

Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,680,893 to NEER. IRWIN discloses the basic claimed apparatus except for explicitly detailing that his material is opaque. NEER does not explicitly detail "opaque"; however, he does teach that it is known in the art to use camouflaged but light transmissive material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form

the section material of IRWIN out of the opaque material of NEER in order to enable a user to see out but while allowing selective amounts of light there through.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,010,909 to CLEVELAND. IRWIN discloses the basic claimed apparatus except for explicitly detailing that the material section has an opening therein. Although IRWIN that his panels (14') are capable of being unconnected and could inherently be used as and "opening". The "opening" per se" is not "in" the material. Hence, CLEVELAND teaches that it is known in the art that an opening (28) capable of being closed by a zipper (26), column 3, line 1-9. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of IRWIN with the opening and zipper of CLEVELAND in order to provide the user with an easier means of communicating externally of the structure. Although the structure of IRWIN has the potential of providing external communication, having to move the panels from one position to another can become cumbersome. The inclusion of an opening and zipper within the fabric allows for a clean, yet easier way of manipulating access to the structure and the external environment.

Claims 7 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,010,909 to CLEVELAND. IRWIN discloses the basic claimed apparatus except for the use of a zippered access. Regarding claim 7, CLEVELAND teaches that it is known in the art to provide a security apparatus (10) with a zippered access (26,28). It would have been obvious to one

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having ordinary skill in the art at the time the invention was made to provide the structure of IRWIN with a zippered access in order to more secure close off the apparatus from external influences. In reference to claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the zippered access allow people to enter and exit.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,010,909 to CLEVELAND, as applied to claim 6 above, and further in view of US Patent #3,911,537 to MAZUR. IRWIN, as modified by CLEVELAND discloses the basic claimed structure except for the inclusion of a zipper lock. MAZUR teaches that it is known in the art to provide a lock (16,17) for a zipper (64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of IRWIN, as modified by CLEVELAND, with the zipper lock of MAZUR in order to provide the structure with a low cost effective and highly effective way of maintaining a durable yet reliable environment; wherein a user has the confidence in knowing that not only he is protected but that all of his belongings is also protected from possible theft and/or vandalism.

Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN. IRWIN discloses the basic claimed apparatus except for explicitly detailing that the attachment members are hangers. IRWIN does not teach the use of "hangers" per se; however, the attachment members (40) are in the form of flaps/strips that "hang" over the supports (20). Furthermore, IRWIN discloses the use of

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ties that would also "hang" over the supports (20). Hence, the applicant has shown no criticality for hangers as opposed to hooks.

Claims 20-28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,680,893 to NEER. IRWIN discloses the use of a security apparatus (10) including a section of material (12) having two sides, a plurality of edges (32), a top and a bottom (both unlabeled); an access means 914'); a plurality of securing means (40) connected to the material (12); and a plurality of attachment members (42,43) connected to the securing means (40) and vertical/horizontal supports (21/22); wherein the attachment members (42,43) are capable of permitting disengagement thereof from only one side of the material (12), see figure 4. Regarding claim 21, IRWIN discloses the basic claimed apparatus except for explicitly detailing that his material is opaque. NEER does not explicitly detail "opaque"; however, he does teach that it is known in the art to use camouflaged but light transmissive material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the section material of IRWIN out of the opaque material of NEER in order to enable a user to see out but while allowing selective amounts of light there through. Regarding claim 23, the selective securing means is an article (41) that forms an "opening" that allows for attachment to the supports (20,21), see figure 4, and is attached to the material (12), column 6, line 5-6. In reference to claims 24 and 25, the securing means is an article (41) is a strap that ultimately forms a loop, column 6, lines 5-6, see figure 4. Regarding claim 26 and 27, IRWIN does not teach the use of "rings" per se'; however, the securing means (40) are



in the form of flaps/strips that "hang" over the supports (20). IRWIN also details that his securing means may be grommets, column 6, line 21, and grommets are rings. The applicant has shown no criticality for hangers or straps as opposed to rings or grommets. In reference to claim 28, the securing means (41) are attached to the section material (12), column 6, lines 5-6.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,680,893 to NEER, as applied to claim 20 above, and further in view of US Patent #4,779,294 to MILLER. IRWIN, as modified by NEER, discloses the basic claimed apparatus except for explicitly detailing that the section of material is KELVAR. Although IRWIN does not detail that his material is "KELVAR", he does, however, disclose that it is nylon, plastic or canvas. MILLER teaches that it is known in the art to form the cover (18) of a protective structure (10) out of KELVAR material, column 4, lines 22-39. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the protective structure of IRWIN, as modified by NEER, out KELVAR material, as taught by MILLER, in order to protect a user from external debris or other unwanted external influences.

Claims 31-34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN. IRWIN discloses the basic claimed apparatus except for explicitly detailing that the beam/pole is extruded; except for explicitly detailing that the fastening member may be tightened; by hand or held with a finger. Regarding claim 31, IRWIN does not detail "extruded" per se; however, he does detail aluminum and

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plastic. Both of these materials are very well known for being extruded. In reference to claims 32-34, IRWIN details that his fastening members (40) may be ties, column 6, line 53. Ties are very well known for being capable of being tightened by hand and by grasping the ends of the tie with the finger.

Claim 52 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,010,909 to CLEVELAND. IRWIN discloses the basic claimed apparatus except for the use of a zippered access.

CLEVELAND teaches that it is known in the art to provide a security apparatus (10) with a zippered access (26,28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of IRWIN with a zippered access in order to more secure close off the apparatus from external influences.

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,010,909 to CLEVELAND, as applied to claim 6 above, and further in view of US Patent #3,911,537 to MAZUR. IRWIN, as modified by CLEVELAND discloses the basic claimed structure except for the inclusion of a zipper lock. MAZUR teaches that it is known in the art to provide a lock (16,17) for a zipper (64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of IRWIN, as modified by CLEVELAND, with the zipper lock of MAZUR in order to provide the structure with a low cost effective and highly effective way of maintaining a durable yet reliable environment; wherein a user has the confidence in knowing that not only he is

protected but that all of his belongings is also protected from possible theft and/or vandalism.

***Allowable Subject Matter***

Claims 10,11,35-41,43,45-48,50 and 53 remain as being objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 3,4,6,9 and 54 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to claims 20 and 29 have been considered but are moot in view of the newly revised ground(s) of rejection as noted above.

Applicant's arguments filed 5/4/05 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the coupling and attachment member are separate) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Regarding the applicant's argument that IRWIN fails to teach separate coupling and attachment members, IRWIN clearly discloses that his fastening assembly (40) includes a pair of tabs (41) having hooks (42) which is interpreted as being coupling

members on one tab (41) and thistles (43) which are interpreted as being attachment members on another tab (41). These elements are in fact "separate", although not explicitly claimed as such, because one is disposed on one portion of the fastening member (40) and the other is on an opposite portion of the fastening member (40).

In reference to the applicant's argument that the fastening assembly of IRWIN cannot be "selectively connected" because "hooks and thistles" are "always connected", no where does IRWIN disclose this. Further, this is found to not necessarily be true because it is known that when "hooks and thistles" are connected, unless precision is used there is a high probability that the two opposing members are not aligned exactly. Hence, the members would be "selectively connected". Thus, in the case of "hooks and thistles", an assessment of being "always connected" would imply a great deal of accuracy. However, the inherent nature of "hooks and thistles" support that an "always connection" is not inherently evitable in all instances. Thus, this is not an fair evaluation of "hook and thistle" fasteners.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne M. Horton  
Examiner  
Art Unit 3635  
7/14/05